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MAY 10 1991

District Counsel, Boise

Assistant Chief Counsel (Income Tax & Accounting)

[REDACTED] (Taxpayers)

This is in response to your memorandum dated February 4, 1991, in which you request technical assistance regarding the calculation of restricted interest under section 6601(d)(1) of the Internal Revenue Code. Specifically, you question whether the ending date for the calculation of interest on a deficiency, partially eliminated by a net operating loss (NOL) carryback from a delinquent return is the filing date of the return for the year in which the NOL arose or the later date on which the return was actually filed.

For the taxable year ended [REDACTED], Taxpayers' return reflected a tax liability of \$[REDACTED]. For the taxable year ended [REDACTED], Taxpayers' return reflected self-employment tax as the only liability and an NOL in the amount of \$[REDACTED]. Taxpayers' income tax return for the taxable year ended [REDACTED], due [REDACTED], was filed on [REDACTED]. The return for the taxable year ended [REDACTED], due [REDACTED], was filed on [REDACTED].

Taxpayers applied the NOL carryback to the deficiency for the taxable year ended [REDACTED], reducing the deficiency to \$[REDACTED]. The Service computed interest on the [REDACTED] deficiency from the due date of the return until the date of the assessment of the [REDACTED] liability. Taxpayers contend that interest on the [REDACTED] deficiency should run only until [REDACTED], the filing date for the taxable year in which the loss arose that was carried back.

Section 6151(a) of the Code provides, in part, that when a return of tax is required, the person required to make such return shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

Section 6601(a) of the Code provides that if any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate

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established under section 6621 shall be paid for the period from such last date to the date paid.

Section 6601(d)(1) of the Code provides that if the amount of any tax is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax shall not affect the computation of interest for the period ending with the filing date for the taxable year in which the net operating loss or net capital loss arises.

Section 6601(d)(3) of the Code provides that the term "filing date" has the meaning given to such term by section 6611(f)(3)(A).

Section 6611(f)(3)(A) of the Code provides that the term "filing date" means the last date prescribed for filing the return for the taxable year (determined without regard to extensions).

Section 301.6601-1(e)(1) of the Procedure and Administration Regulations provides, in part, as follows:

The carryback of a net operating loss, net capital loss, investment credit, or work incentive program (WIN) credit shall not affect the computation of interest on any income tax for the period commencing with the last day prescribed for the payment of such tax and ending with the last day of the taxable year in which the loss or credit arises. For example, if the carryback of a net operating loss, a net capital loss, an investment credit, or a WIN credit to a prior taxable period eliminates or reduces a deficiency in income tax for that period, the full amount of the deficiency will nevertheless bear interest at the annual rate referred to in the regulations under section 6621 from the last date prescribed for payment of such tax until the last day of the taxable year in which the loss or credit arose.

The reason that the language quoted above refers to interest running until "the last day of the taxable year in which the loss or credit arose" rather than to the filing date for that year is that the regulations reflect the prior rather than the current language of section 6601(d) of the Code. See section 346(c)(2)(A) of the Tax Equity and Fiscal Responsibility Act of 1982, 1982-2 C.B. 580, which amended section 6601(d)(1) by substituting "the filing date for the taxable year" for "the last day of the taxable year". A comparable amendment was also made to section 6601(d)(2).

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In Avon Products, Inc. v. U.S., 588 F.2d 342, (2d Cir. 1978), the court interpreted section 6601(a) of the Code to mean that interest on an underpayment can only be charged when the tax is both due and unpaid, reasoning that interest is charged only for the loss of the use of money.

The NOL carried back from [REDACTED] reduced the [REDACTED] deficiency to \$[REDACTED]. The reduction was effective as of the filing date of the return for the year in which the NOL arose even through the return for that year was filed late.

Under the principle of the Avon Products case, interest is charged only for the period during which the government is deprived of the use of its money. Accordingly, interest on the entire deficiency runs until [REDACTED] at which time the deficiency was reduced by the NOL carryback that arose in the taxable year ended [REDACTED]. Interest on the reduced deficiency runs until the date paid.

A project has been undertaken to revise the provisions of the Internal Revenue Manual dealing with the computation of restricted interest, including conforming the IRM to reflect the position expressed in this memorandum. Please contact Cindy Davis, FTS 566-4177, if we can be of further assistance.

(signed) Robert A. Berkovsky
By _____
Robert A. Berkovsky
Chief, Branch 2

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4-10-91/ pt. 5-9-91 cad/disc. 1 doc. [REDACTED]